

Internal Revenue Service, Treasury

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(iii) Purchase between persons treated as one person.

(iv) Purchase by a person already treated as holding stock under section 355(d)(8)(A).

(v) Examples.

(2) Transferred basis rule.

(3) Exchanged basis rule.

(i) In general.

(ii) Example.

(4) Certain section 355 or section 305 distributions.

(i) Section 355.

(ii) Section 305.

(5) Substantial diminution of risk.

(i) In general.

(ii) Property to which suspension applies.

(iii) Risk of loss substantially diminished.

(iv) Special class of stock.

(f) Duty to determine stockholders.

(1) In general.

(2) Deemed knowledge of contents of securities filings.

(3) Presumptions as to securities filings.

(4) Presumption as to less-than-five-percent shareholders.

(5) Examples.

(g) Effective date.

§1.355-7T Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) In general.

(b) Plan.

(1) In general.

(2) Certain post-distribution acquisitions.

(3) Plan factors.

(4) Non-plan factors.

(c) Operating rules.

(1) Internal discussions and discussions with outside advisors evidence of business purpose.

(2) Takeover defense.

(3) Effect of distribution on trading in stock.

(4) Consequences of section 355(e) disregarded for certain purposes.

(5) Multiple acquisitions.

(d) Safe harbors.

(1) Safe Harbor I.

(2) Safe Harbor II.

(3) Safe Harbor III.

(4) Safe Harbor IV.

(5) Safe Harbor V.

(i) In general.

(ii) Special rules.

(6) Safe Harbor VI.

(i) In general.

(ii) Special rule.

(7) Safe Harbor VII.

(i) In general.

(ii) Special rule.

(e) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.

(1) Treatment of options.

(i) General rule.

(ii) Agreement, understanding, or arrangement to write an option.

(iii) Substantial negotiations related to options.

(2) Instruments treated as options.

(3) Instruments generally not treated as options.

(i) Escrow, pledge, or other security agreements.

(ii) Compensatory options.

(iii) Options exercisable only upon death, disability, mental incompetency, or separation from service.

(iv) Rights of first refusal.

(v) Other enumerated instruments.

(f) Multiple controlled corporations.

(g) Valuation.

(h) Definitions.

(1) Agreement, understanding, arrangement, or substantial negotiations.

(2) Controlled corporation.

(3) Controlling shareholder.

(4) Coordinating group.

(5) Discussions.

(6) Established market.

(7) Five-percent shareholder.

(8) Similar acquisition.

(9) Ten-percent shareholder.

(i) [Reserved]

(j) Examples.

(k) Effective dates.

[T.D. 8238, 54 FR 289, Jan. 5, 1989, as amended by T.D. 8913, 65 FR 79722, Dec. 20, 2000; T.D. 8960, 66 FR 40591, Aug. 3, 2001; T.D. 8988, 67 FR 20636, Apr. 26, 2002; 67 FR 38200, June 3, 2002]

§ 1.355-1 Distribution of stock and securities of a controlled corporation.

(a) *Effective date of certain sections.* Sections 1.355-1 through 1.355-4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355-1 through 1.355-4 (revised as of April 1, 1987). Sections 1.355-1 through 1.355-4 do not reflect the amendments to section 355 made by the Revenue Act of 1987 and the Technical and Miscellaneous Revenue Act of 1988.

(b) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to (or the inclusion in income of) the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation (the “distributing corporation”). It applies only to the separation of existing businesses that have been in active operation for at least five years (or a business that has been in active operation for at least five years into separate businesses), and which, in general, have been owned, directly or indirectly, for at least five years by the

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distributing corporation. A separation is achieved through the distribution by the distributing corporation of stock, or stock and securities, of one or more subsidiaries (the “controlled corporations”) to its shareholders with respect to its stock or to its security holders in exchange for its securities. The controlled corporations may be pre-existing or newly created subsidiaries. Throughout the regulations under section 355, the term *distribution* refers to a distribution by the distributing corporation of stock, or stock and securities, of one or more controlled corporations, unless the context indicates otherwise. Section 355 contemplates the continued operation of the business or businesses existing prior to the separation. See § 1.355-4 for types of distributions that may qualify under section 355, including pro rata distributions and non pro rata distributions.

(c) *Stock rights.* Except as provided in § 1.356-6, for purposes of section 355, the term *securities* includes rights issued by the distributing corporation or the controlled corporation to acquire the stock of that corporation. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain distributions occurring in connection with a transaction described in section 355. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (c) applies to distributions occurring on or after March 9, 1998.

(d) *Nonqualified preferred stock.* See § 1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See § 1.356-7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred

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stock described in section 351(g)(2)(C)(i)(II).

[T.D. 8238, 54 FR 289, Jan. 5, 1989, as amended by T.D. 8752, 63 FR 410, Jan. 6, 1998; T.D. 8882, 65 FR 31078, May 16, 2000; T.D. 8904, 65 FR 58651, Oct. 2, 2000]

§ 1.355-2 Limitations.

(a) *Property distributed.* Section 355 applies to a distribution only if the property distributed consists solely of stock, or stock and securities, of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered) is received, see section 356.

(b) *Independent business purpose—(1) Independent business purpose requirement.* Section 355 applies to a transaction only if it is carried out for one or more corporate business purposes. A transaction is carried out for a corporate business purpose if it is motivated, in whole or substantial part, by one or more corporate business purposes. The potential for the avoidance of Federal taxes by the distributing or controlled corporations (or a corporation controlled by either) is relevant in determining the extent to which an existing corporate business purpose motivated the distribution. The principal reason for this business purpose requirement is to provide nonrecognition treatment only to distributions that are incident to readjustments of corporate structures required by business exigencies and that effect only readjustments of continuing interests in property under modified corporate forms. This business purpose requirement is independent of the other requirements under section 355.

(2) *Corporate business purpose.* A corporate business purpose is a real and substantial non Federal tax purpose germane to the business of the distributing corporation, the controlled corporation, or the affiliated group (as defined in § 1.355-3(b)(4)(iv)) to which the distributing corporation belongs. A purpose of reducing non Federal taxes is not a corporate business purpose if (i) the transaction will effect a reduction in both Federal and non Federal taxes because of similarities between